



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000208
First-tier Tribunal No: HU/54558/2023
LH/02681/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 15 August 2024

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

SAIDA JAN AHMADZAI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Rule 34 Decision at Field House on 5 August 2024

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant against the decision of Judge of the First-tier Tribunal Curtis ('the Judge'), sent to the parties on 24 November 2023, dismissing his human rights (article 8) appeal. The appellant seeks entry clearance as the parent of a British citizen child.

2. Judge of the First-tier Tribunal Burnett granted the appellant permission to appeal by a decision dated 18 January 2024.
3. The respondent filed a 'rule 24 response' with the Upper Tribunal, dated 25 January 2024, accepting that the Judge engaged in impermissible speculation on an issue not canvassed at the hearing. The respondent confirmed her position that the Judge's decision was properly to be set aside on the ground of procedural unfairness and that the appeal should be remitted to the First-tier Tribunal.

Rule 34 Decision

4. In considering whether to proceed under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I am mindful as to the circumstances when an oral hearing is to be held in order to comply with the common law duty of fairness and as to when a decision may appropriately be made consequent to a paper consideration: *Osborn v The Parole Board* [2013] UKSC 61; [2014] AC 1115 and *JCWI v President of the Upper Tribunal (Immigration and Asylum Chamber)* [2020] EWHC 3103 (Admin), at [6.1 - 6.14].
5. In the circumstances and being mindful of the importance of these proceedings to the appellant, the identified position of the respondent, the expense to the parties of attending an oral hearing and the overriding objective that the Upper Tribunal deal with cases fairly and justly, I am satisfied that it is just and appropriate to proceed under rule 34.
6. The Judge made findings as to events in the appellant's marriage to the sponsor, such events not being raised within the respondent's decision or with either the appellant's representative or the sponsor at the hearing. The evidence relied upon is identifiable within medical records filed with the First-tier Tribunal.
7. The respondent accepts by her rule 24 response that, "there was no reference to this evidence in the refusal decision and the issue was not canvassed at the hearing. On one view, the appellant could not be expected to be able to deal with the issue. This arguably demonstrates that the hearing was procedurally unfair."
8. I consider that the respondent was correct to adopt this position. The sponsor attended the hearing and would have been capable of addressing issues raised by the Judge, either at the hearing or at an adjourned hearing. Additionally, by focusing on concerns identifiable

within medical records, the Judge failed to adequately engage with, and consider, the sponsor's oral evidence at the hearing. In the circumstances, I find that the challenged decision is fatally flawed on the ground of procedural unfairness.

9. The appellant and sponsor are properly considered to be on notice of the issues identified in the medical records and can be expected to address them at the next hearing of this appeal.
10. I observe the guidance in *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC). As the appellant has not to date enjoyed adequate assessment of his appeal, I consider it fair and just to remit this matter to the First-tier Tribunal.

Notice of Decision

11. The decision of the First-tier Tribunal sent to the parties on 24 November 2023 is set aside for material error of law, save for the finding at [8] that the sponsor is a vulnerable adult consequent to her health.
12. The appeal is remitted to the First-tier Tribunal sitting in Bradford, to be listed before any judge other than Judge of the First-tier Tribunal Curtis.
13. No anonymity order is made.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 August 2024